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10/809,726

03/25/2004

Don B. Smith

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EXAMINER

UTAMA, ROBERT J

ART UNIT

PAPER NUMBER

3714

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DELIVERY MODE

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/809,726

Applicant(s)

SMITH, DON B.

Examiner

Robert J. Utama

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 04/08/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

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**DETAILED ACTION*****Drawings***

1. The drawings are objected to because the drawings for figure 1-15 are dark and most of the writing in the drawings is illegible. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claim 1-4, 6, 9-12 and 15 rejected under 35 U.S.C. 102(b) as being anticipated by Ramshaw et al 5,791,907.**

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**Claim 1 and 10:** Ramshaw provides a teaching of a system for evidence-based, virtual instruction and/or evaluation of a user, comprised of: a presenting profile domain containing parametric information regarding a situation to be remedially addressed (see col. 8:60-9:5); a remedial action domain containing at least two set courses of action, predicated by practice guideline, for remedially addressing the situation in the presenting profile (see col. 3:25-32); a means for selecting at least one course of action (see col. 3:25-32) and means for comparing at least one course of action to a group selected from courses of action selected by expert in the field of the presenting profile domain and an evidence-based set of selected course of action (see col. 3:33-42). Specifically for claim 10, while the Ramshaw does not explicitly use the word database, it would have been inherent that the information (or data) presented is stored in physical device configured to store such data. Hence, these information storage device are considered as a database.

**Claim 2 and 11:** Ramshaw provides a teaching of an evaluation domain containing a fact based, empirically derived data for further defining the situation in the presenting profile (see col. 13:49-62).

**Claim 3 and 12:** Ramshaw provide a teaching for storing said selected at least on of said courses of action for remedially addressing the situation in said presenting profile (see col. 6:24-30).

**Claim 4:** Ramshaw contain an implicit teaching of a means to reset the system. Ramshaw's system consist of a typical computer system (see FIG. 1A -1B). It is inherent that should a user were to remove the power supply (i.e.: unplugging the computer), one would reset the system.

**Claim 6 and 15:** Ramshaw provide a teaching for displaying practice advisory guideline upon which the evidence-based of selected course of action is selected (see col. 3:1-10).

**Claim 9:** Ramshaw provide a teaching where the system is computerized (see FIG. 1A-1B).

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***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claim 5 and 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Ramshaw et al US 5,791,907, in view of Schouten.**

**Claim 5 and 14:** While Ramshaw provide a teaching of providing a score based upon said score based upon selected at least on of said courses of action for remedially addressing the situation in said presenting profile. Ramshaw fails to provide a teaching for scoring and calculating *kappa score* based upon said score based upon selected at least on of said courses of action for remedially addressing the situation in said presenting profile.

Schouten provides a teaching for a calculating kappa score (see Schouten page 2 equation 4). Therefore, it would have been obvious to one of ordinary skilled in the art at the time of the invention to include the method of calculating kappa score, as taught by Schouten, into the system of Ramshaw, because it would enable the user to correlate the agreement of his/her courses of action with the known acceptable practice of a certain medical procedure (see Schouten page 1).

6. **Claim 7-8, 16-17, 18-20, 22-24 and 26-28 rejected under 35 U.S.C. 103(a) as being unpatentable over Ramshaw et al US 5,791,907, in view of Rivonelli et al US 6,246,975.**

**Claim 7-8, 16-17 and 27-28:** While Ramshaw provides a teaching of a database for the profile, remedial action and evaluation domain that allows partial relative change. However, Ramshaw does not specify if these databases share a relational relationship that allows partial relative change.

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Rivonelli provide a teaching of having a patient database that shares a relational relationship that allows partial relative change (see Rivonelli FIG. 3 and col. 8:15-26). Therefore, it would have been obvious for one of ordinary skilled in the art at the time of the invention, to include the feature of incorporating relational databases into the system of Ramshaw, as taught by Rivonelli, because such databases allow for more realistic and useful information simulation (see Rivonelli col. 8:45-52).

**Claim 18:** Ramshaw provides a teaching of a system for evidence-based, virtual instruction and/or evaluation of a user, comprised of: a presenting profile domain containing parametric information regarding a situation to be remedially addressed (see col. 8:60-9:5); a remedial action domain containing at least two set courses of action, predicated by practice guideline, for remedially addressing the situation in the presenting profile (see col. 3:25-32); a means for selecting at least one course of action (see col. 3:25-32) and means for comparing at least one course of action to a group selected from courses of action selected by expert in the field of the presenting profile domain and an evidence-based set of selected course of action (see col. 3:33-42). While the Ramshaw does not explicitly use the word database, it would have been inherent that the information (or data) presented is stored in physical device configured to store such data. Hence, these information storage devices are considered as a database. However, Ramshaw does not specify if these databases share a relational relationship. Rivonelli provide a teaching of having a patient database that shares a relational relationship (see Rivonelli FIG. 3 and col. 8:15-26). Therefore, it would have been obvious for one of ordinary skilled in the art at the time of the invention, to include the feature of incorporating relational databases into the system of Ramshaw, as taught by Rivonelli, because such databases allow for more realistic and useful information simulation (see Rivonelli col. 8:45-52).

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**Claim 19:** Ramshaw provides a teaching of an evaluation domain containing a fact based, empirically derived data for further defining the situation in the presenting profile (see col. 13:49-62).

However, Ramshaw does not specify if these databases share a relational relationship. Rivonelli provide a teaching of having a patient database that shares a relational relationship (see Rivonelli FIG. 3 and col. 8:15-26). Therefore, it would have been obvious for one of ordinary skilled in the art at the time of the invention, to include the feature of incorporating relational databases into the system of Ramshaw, as taught by Rivonelli, because such databases allow for more realistic and useful information simulation (see Rivonelli col. 8:45-52).

**Claim 20:** Ramshaw provides a teaching system where the system is network (col. 6:29-45).

**Claim 22:** Ramshaw does not explicitly states a feature of updating the database. The examiner is taking **OFFICIAL NOTICE** on the feature of updating the database as old and well known in the field of database design and maintenance. Therefore, it would have been obvious to include the feature updating the database because it would allow the system designer to delete erroneous or out-dated information and put the correct information in the database.

**Claim 23:** Ramshaw provide a teaching of a database where the for data storage of at least one of said course of action for remedially addressing the situation in said presenting profile and sixth database at least one of said courses of action for remedially addressing the situation in said presenting profile (see col. 6:24-30).

However, Ramshaw does not specify if these databases share a relational relationship. Rivonelli provide a teaching of having a patient database that shares a relational relationship (see Rivonelli FIG. 3 and col. 8:15-26). Therefore, it would have been obvious for one of ordinary skilled in the art at the time of the invention, to include the feature of incorporating relational databases into the system of Ramshaw, as taught by Rivonelli, because such

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databases allow for more realistic and useful information simulation (see Rivonelli col. 8:45-52).

**Claim 24:** Ramshaw contain an implicit teaching of a means to reset the system. Ramshaw's systems consist of a typical computer system (see FIG. 1A -1B). It is inherent feature of a computer system, that should a user were to remove the power supply (i.e.: unplugging the computer), one would reset the system.

**Claim 26:** Ramshaw provide a teaching for displaying practice advisory guideline upon which the evidence-based of selected course of action is selected (see col. 3:1-10).

7. **Claim 13 rejected under 35 U.S.C. 103(a) as being unpatentable over Ramshaw et al US 5,791,907.**

**Claim 13:** Ramshaw does not explicitly states a feature of purging said selected at least one of said courses of action for remedially addressing the situation in said presenting profile. The examiner is taking **OFFICIAL NOTICE** on the feature of purging all or some of the part of a database as old and well known in the art of computer architecture. Therefore, it would have been obvious to of ordinary skilled in the art at the time of the invention to include the feature of purging said selected at least one of said courses of action for remedially addressing the situation in said presenting profile because it would allow the system designer to delete erroneous or out-dated information and put the correct information in the database.

8. **Claim 21 rejected under 35 U.S.C. 103(a) as being unpatentable over Ramshaw et al US 5,791,907, in view of Rivonelli et al US 6,246,975 and further in view of Ho et al 6,029,043.**

**Claim 21:** Ramshaw does not provide a teaching where part of the network comprises the internet. The combination of Rivonelli and Ramshaw fail to rectify this deficiency.



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Ho provide a teaching of an education system with the internet as part of the network (see Ho col. 12:1-9). Therefore, it would have been obvious for one of ordinary skilled in the art to include the feature of system with the internet as part of the network, as taught by Ho, into the system of Ramshaw and Rivonelli because it would allow the system to accessible to the user via the internet.

**9. Claim 25 rejected under 35 U.S.C. 103(a) as being unpatentable over Ramshaw et al US 5,791,907, in view of Rivonelli et al US 6,246,975 and further in view of Schouten.**

**Claim 25:** While Ramshaw provide a teaching of providing a score based upon said score based upon selected at least on of said courses of action for remedially addressing the situation in said presenting profile. Ramshaw fails to provide a teaching for scoring and calculating *kappa score* based upon said score based upon selected at least on of said courses of action for remedially addressing the situation in said presenting profile. The combination of Ramshaw and Rivonelli do not rectify this deficiency.

Schouten provides a teaching for a calculating kappa score (see Schouten page 2 equation 4). Therefore, it would have been obvious to one of ordinary skilled in the art at the time of the invention to include the method of calculating kappa score, as taught by Schouten, into the system of Ramshaw, because it would enable the user to correlate the agreement of his/her courses of action with the known acceptable practice of a certain medical procedure (see Schouten page 1).

### **Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Utama whose telephone number is (571) 272-1676. The examiner can normally be reached on M-F 9:00-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezutto can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RU  
June 13, 2007

  
**KATHLEEN MOSSER**  
**PRIMARY EXAMINER**  
**ART UNIT 3714**